THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION No.8979 of 2004

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20.9.2005

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Between

1. Mylarpu Sadasiv, S/o.Sambaiah, Sirpur Town, Adilabad District

and others.

... Petitioners

AND

1. The Principal Secretary, Civil Supplies Department, Government of

Andhra Pradesh, Hyderabad. And others.

... Respondents

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ORDER:

The writ petition is filed to declare the notification dated 01.5.2004 issued by the second respondent, calling for the applications for filling up the vacancies of fair price shop dealers for supply of essential commodities in Sirpur Mandal, as illegal and arbitrary.

The facts of the writ petition, in brief, are that the petitioners are the fair price shop dealers and for the last 10 years they are distributing essential commodities without any complaint from any quarter. Their licences for the year 2003-2004 are in subsistence. The third respondent also issued proceedings dated 01.4.2004 showing shop-wise allotment of essential commodities for the month of April 2004. While so, the second respondent issued a notification dated 01.5.2004 calling for applications for allotment of fair price shops in Sirpur Mandal. Alleging that the action of the second respondent in showing the fair price shops already subsisting in favour of the petitioners as vacant is illegal and arbitrary, the present writ petition is filed.

A counter affidavit has been filed by the respondents contending that the authorizations of the petitioners to run the fair price shops expired long back. As per clause 5 (iii) of A.P. Public Distribution System Control Order, 2001 (Control Order, for brevity), if any application for renewal of authorization is not made within one month, after the expiry of its validity, the authorization shall cease to be valid and the entire security made under sub-clause (2) of Clause 3 of Control Order shall be forfeited. Therefore, the trade deposits of the petitioners were returned vide letter No.C/430/2004 dated 01.5.2004 along with entire proposals.

The authorizations of the petitioners 1, 3 and 9 lapsed by 31.3.2002, petitioner Nos.4 and 8 authorizations lapsed by 31.3.2001, the authorization of petitioner No.6 lapsed by 31.3.2003 and the petitioner Nos.5, 7 and 10 have not been obtained authorizations since their appointment. The second petitioner, now, is not a fair price shop dealer, as in her place, her husband has been appointed as a temporary dealer. None of the petitioners have valid authorization to run fair price shop. The Mandal Revenue Officer, in order to make temporary arrangement and especially to avoid any inconvenience to the cardholders, allotted essential commodities in favour of the petitioners and that temporary adjustment does not give any right to the petitioners to continue as fair price shop dealers, as the validity of their authorizations lapsed long back. Therefore, the notification dated 01.5.2004 was issued to appoint permanent dealers and the petitioners were informed to attend for interview to be held on 19.5.2004 besides communicating latest instructions for eligibility criteria.

Heard the learned Counsel for the petitioners and the learned Government Pleader for Civil Supplies Department.

The learned Counsel for the petitioners raised two contentions. Firstly, it is contended that in the month of April 2004, the Mandal Revenue Officer, Sirpur Mandal allotted them the essential commodities for distribution and therefore, it is deemed that they were having valid authorization by the date of issue of impugned notification and unless such authorizations are cancelled or revoked by the competent authority, no notification can be issued. Secondly, that the Assistant Collector, Asifabad, Adilabad District has no authority to issue the notification calling for the applications to fill up vacancies of fair price shop dealers.

On the other hand, the learned Standing Counsel for Civil Supplies contended that

the petitioners have not filed any document to show that their authorizations are subsisting as on the date of issue of the notification. In the counter affidavit, it is specifically asserted that as on the date of notification, the validity of authorization to some of the petitioners expired and the validity of authorization to the remaining petitioners was not renewed. The Revenue Divisional Officer is the competent authority to issue notification because in some areas, the Revenue Divisional Officer is designated as Assistant Collector. Therefore, there are no grounds to quash the notification issued by the second respondent.

The authorization to run fair price shops is essential for any dealer and it is being extended from time to time. Clause 5(5)(iii) of Control Order deals with application for issue/renewal of authorization from time to time. If an authorization expired, the application for renewal must be made to the competent authority within one month from the date of expiry of its validity. Clause 5(5)(iii) of Control Order reads as under:

> *The authorization may be renewed if the application for renewal is received within one month after the expiry of the period of its validity subject to payment of fee prescribed therefore. However, if an application for renewal of authorization is not made within one month, after the expiry of its validity, the authorization shall cease to be valid and the entire security deposit made under sub-clause (2) of clause (3) shall be forfeited.*

The allegation made in the affidavit of the petitioners that the fair price shops were allotted to them for supply of essential commodities is very vague, because the period for which they were authorized to supply the essential commodities is not mentioned. In the counter affidavit filed by the respondents, it is specifically stated that the validity of authorizations of the petitioners 1, 3 and 9 was lapsed by 31.3.2002, the validity of the authorizations of the petitioners 4 and 8 was lapsed by 31.3.2001 and the validity of the authorization of the petitioner No.6 has lapsed by 31.3.2003. It is also stated in the counter affidavit that the petitioners 5, 7 and 10 did not obtain authorizations since their appointment as fair price shop dealers. The said fact has not been denied or disputed by the petitioners by filing reply affidavit. Therefore, when the petitioners have no authorization as on the date of issue of the notification or their authorizations have not been duly renewed by the competent authority, it is clear that they have no valid authorization subsisting as on the date of notification and therefore, they have no right to challenge the notification.

Learned Counsel for the petitioners placed a strong reliance on the proceedings of the Mandal Revenue Officer, Sirpur with regard to allotment of essential commodities for the month of April 2004. The learned Counsel relied upon clause 5(4) of the Control Order, which reads as under:

> *The appointing authority may, at any time where at the request of the authorized fair price shop or authorized establishment or suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, very, suspend or cancel the authorization issued or deemed to be issued to him under this clause.*

The learned Counsel for the petitioners placed a strong reliance on the words “deemed to be issued” and contends that since allotment was made, it is deemed that the petitioners have valid authorization by the date of the Proceedings issued by the Mandal Revenue Officer. When it is clear that the petitioners did not have valid authorization by the date of issue of impugned notification and in view of the fact that the Mandal Revenue Officer allotted the essential commodities in the names of the petitioners in order to avoid any inconvenience to the cardholders, the temporary arrangement does not give any right to the petitioners to question the notification issued for appointing fair price shop dealers on permanent basis.

The learned Counsel for the petitioners relying upon an unreported judgment of this Court in W.P.No.22948 of 2004 dated 28.6.2005 contends that the Assistant Collector has no authority to cancel the authorization. The authorizations of the petitioners lapsed and no document is placed before this Court showing that their authorizations are subsisting as on the date of issue of notification. The issue whether the Assistant Collector has authority to issue the impugned notification is purely academic one and the academic issues need not be answered by this Court. Therefore, when it is clear that the petitioners did not have valid authorization by the date of issue of impugned notification and in view of the fact that the Mandal Revenue Officer allotted the essential commodities in the names of the petitioners in order to avoid any inconvenience to the cardholders, the petitioners do not have any right to question the notification issued for appointing fair price shop dealers on permanent basis. No right of the petitioners, as alleged in the writ petition, has been infringed to order Mandamus. The writ petition is devoid of merits.

The writ petition, for the above reasons, is dismissed. No costs.

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(**K.C.BHANU,J**)

September 20, 2005.

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